

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT) RULES 2017

2017 No. 413 (L. 6)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Rules amend the Family Procedure Rules 2010 (“the FPR 2010”), which set out the practice and procedure to be followed in family proceedings in the High Court and in the family court. These Rules:
- amend the provisions in Part 10 and 11 of the FPR 2010 relating to the service of protective orders to make clear that an applicant should not him or herself personally hand the application or order to the person they are seeking the protective order against;
 - make two minor, tidying amendments to the FPR 2010.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The FPR 2010, and amendments to them, are made by the Family Procedure Rule Committee (“the Committee”) and formally allowed by the Lord Chancellor.
- 4.2 Rules 10.3, 10.6, 11.4 and 11.7 of the FPR 2010 set out the procedure for serving applications for various types of protective orders, and for serving such orders, on a respondent. The relevant types of applications and orders are non-molestation orders, occupation orders, forced marriage protection orders and female genital mutilation protection orders. The FPR 2010 state that these applications and orders must be served by the applicant on the respondent personally, with the court having a discretion to order service in other ways. The proposed amendments make clear that the applicant should not him or herself hand the papers to the respondent.
- 4.3 In relation to forced marriage protection orders and female genital mutilation protection orders, applications can be made by an “organisation” as well as by an individual. In light of provisions made in other legislation, the only organisation that could currently apply would be a local authority.

- 4.4 The intention is that the prohibition on handing papers over in person should not apply to an applicant that is an organisation. The insertion of a definition of “individual” into rule 11.1 FPR 2010, read with the amendments made to rules 11.4 and 11.7 FPR 2010 achieves this end.
- 4.5 The FPR 2010 were amended in 2015 so that the rules in Part 11 apply not only in respect of forced marriage protection orders, but also in relation to proceedings under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 for female genital mutilation protection orders. Rules 4(2)(a) and 5 of these Rules make minor, tidying consequential amendments needed in light of those earlier amendments.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to family courts in England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Committee amends the FPR 2010 periodically in accordance with its statutory duty to ensure the Family Procedure Rules reflect the practice and procedure of the family court and the Family Division of the High Court.
- 7.2 As explained above, the amendments to Parts 10 and 11 of the FPR are made so that applicants seeking a protective order are prevented from themselves serving the application and / or order on the person they are seeking the order against. This is to ensure the protection of the applicant (where the applicant is an individual rather than an organisation) so he or she is not placed at risk of harm, violence or coercion in an attempt to serve the protective order. The amendments are intended to remove any confusion around what is meant by a requirement to “personally serve” a respondent. The term means that the papers have to be handed to the respondent in person, so not, for example, posted to the respondent’s address. But it does not mean that the applicant has to him or herself personally hand the papers over.
- 7.3 These changes are made following a case in which an applicant for a non-molestation order handed papers to the respondent herself. This case highlighted the need to ensure the person seeking protection is adequately shielded from situations which may cause them further harm or distress. The Committee considers that the changes will protect individual applicants, particularly in those high risk cases, from risk of harm (physical or emotional) when attempting to provide notice of the proceedings to the respondent. In addition to the rule amendments, guidance information issued to court staff and to applicants by Her Majesty’s Courts and Tribunals Service (“HMCTS”) will be amended to make clear that applicants should not be handing over papers in person, and that this is not what is meant by the requirement to “personally serve” the respondent. Individual applicants can make an application to the court for service of the application and / or order by completing form D89: ‘Request for personal service by a court bailiff.’ Another alternative method of

service for individual applicants would be instruct a private process server to serve the papers.

- 7.4 The new provisions in relation to service will apply to all new proceedings from 6 April 2017. For proceedings that have already commenced, the new provisions will apply to all applications / orders served within these proceedings on or after 6 April 2017.
- 7.5 The amendments made to the FPR 2010 by rules 4(2)(a) and 5 of these Rules are minor tidying amendments made in consequence of amendments made in 2015 to make provision regarding female genital mutilation protection orders.

Consolidation

- 7.6 The FPR 2010 provide a consolidated unified set of rules for all types of family proceedings. These Rules amend the FPR 2010. There are currently no plans to undertake a consolidation exercise. The FPR 2010 as amended will be published on the Family Procedure Rules website at the following link:
http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu.

8. Consultation outcome

- 8.1 The Family Procedure Rule Committee (“the Committee”) must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003). As the amendments to the FPR 2010 contained in these Rules were considered by the Committee to be uncontroversial and clarifying, or to be making minor tidying amendments, the Committee did not undertake formal consultation in relation to these Rules.
- 8.2 In preparing these Rules for the Committee, Ministry of Justice officials did liaise closely with HMCTS. Their views were taken into account in the drafting of these Rules.

9. Guidance

- 9.1 The FPR 2010 as amended by these Rules will be available to the public and legal practitioners on the website referred to at paragraph 7.6. Guidance to HMCTS staff will be updated to reflect the procedures in the FPR 2010 as amended by these Rules.
- 9.2 In addition the application forms and associated guidance notes in relation to each of these protective orders has been updated as outlined at paragraph 7.3 above.

10. Impact

- 10.1 These Rules will have a small impact on business, charities or voluntary bodies, in that those providing legal advice, such as solicitors and barristers, will need to be aware of the amendments made by these Rules and how to apply them.
- 10.2 These Rules have no impact on the public sector, save that HMCTS staff will need to be aware of the amendments made by these Rules and ensure there are sufficient resources available to apply them.
- 10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

- 11.1 These Rules do not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Committee has the statutory power to make the Family Procedure Rules, which must be exercised with a view to securing that the family justice system is accessible, fair and efficient and that the rules are simply and clearly expressed. The Committee will consider any information provided in relation to the practical operation of the amendments to the FPR 2010 made by these Rules, and consider whether any further amendments are needed as a result.

13. Contact

- 13.1 Please contact Joanne Thambyrajah, Secretary to the Family Procedure Rule Committee, Ministry of Justice, (tel: 0203 334 3181 or e-mail: joanne.thambyrajah1@justice.gsi.gov.uk) who can answer any queries regarding the instrument.